

Lawyer Sought to Block Prosecution

Oil Talks vs. Antitrust

By Morton Mintz

Washington Post Staff Writer

An oil industry lawyer and former presidential adviser told a Senate hearing yesterday how for a decade he had laid groundwork to ensure that the Justice Department would not prosecute major oil companies for joining to deal with oil-producing countries.

John J. McCloy said he had alerted President Kennedy to a possible need for "concerted action" in 1961, a year after the occurrence of "a rather startling phenomenon": formation of the Organization of Petroleum Exporting Countries (OPEC).

Kennedy, concerned after a jolting encounter with Soviet Premier Khrushchev about the possibility of a political confrontation in the Middle East, "right then and there made an arrangement" for McCloy to see Attorney General Robert F. Kennedy. McCloy told the Senate Subcommittee on Multinational Corporations.

McCloy was then an adviser to President Kennedy, who had asked him to set up a system for arms control. At the same time, he was a member of the New York law firm of Milbank, Tweed, Hadley & McCloy, which has represented as many as 23 oil companies at a time.

McCloy told how he had appraised Robert Kennedy and each succeeding Attorney General through John N. Mitchell that the time could come when the companies would need a business review or "enforcement intention" letter from the Justice Department.

McCloy said that time came in January, 1971, after OPEC

countries had agreed on a joint demand for an increase in their share of profits from 50 to 55 per cent.

Mitchell, in a deposition made public by subcommittee chairman Frank Church (D-Idaho), said his predecessor, Ramsey Clark, had informed him of an "understanding" between the department and major oil companies.

In 1969 and 1970 Mitchell had five conversations with McCloy, his log showed. On Jan. 13, 1971, they talked by phone and then met, joined by antitrust chief Richard W. McLaren.

The purpose of the meeting was to review a message major oil companies wanted to send to the OPEC nations, saying they intended to deal with its members in the Persian Gulf and with Libya in a single negotiation. By avoiding dual negotiations, the companies hoped to prevent the Gulf countries and Libya from playing leapfrog with prices.

This was "the only hope for offsetting a 'concerted onrush of government demands' from OPEC," McCloy testified.

Two days later, in a business review letter to McCloy, McLaren said the department "does not presently intend to take action under the antitrust laws with respect to this agreement or the actions contemplated therein," but "reserves the right to take action in the future" if events dictate.

McCloy insisted that this and other such letters, obtained purely out of an "abundance of caution," were not a waiver of the antitrust laws. But Church said they amounted to that.

Later in January, 1971, the oil companies sent the message to OPEC and dispatched two negotiators to Iran. There, they were stunned to find that, despite a decade of careful preparation by McCloy in Washington, the principle of a single negotiation was not favored by Ambassador Douglas MacArthur II, who had agreed with the Iranians that dual negotiations were to be preferred. He had become "more Persian than the Persians," McCloy remarked in a joking tone.

In addition, Under Secretary of State John N. Irwin II, who rushed to Iran after McCloy had requested State Department help, surprisingly recommended to Washington that negotiations be split.

The companies then yielded, a decision that was followed by a succession of tougher OPEC demands.

McCloy himself was worried at the time. In a cable obtained by the subcommittee, he warned of "the chain reaction inherent in separate negotiations."

Yesterday, however, McCloy said the industry had made

the decision "on its own responsibility, irrespective of what the government did." Until the Arab-Israeli war last October, the decision had worked out well, he said.

But a skeptical Church revealed that Irwin, in a closed hearing, had said that if the government had held fast for one negotiation, the Iranians would have gone along.

"We probably would have done better if we had held the fort," McCloy acknowledged.



By Ken Felt—The Washington Post

John J. McCloy: warned of "chain reaction" on oil.